

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

GARY ABELAR

Petitioner,

vs.

KEN CLARK, Warden,

Respondent.

CASE NO. 07cv0556 JM(BLM)


ORDER ADOPTING REPORT AND  
RECOMMENDATION RE:  
GRANTING IN PART AND  
DENYING IN PART  
RESPONDENT'S MOTION TO  
DISMISS

On September 11, 2007 Magistrate Judge Barbara L. Major entered a Report and Recommendation recommending the denial of the motion to dismiss the Petition on the ground that claim two is unexhausted and the granting of the motion to dismiss on the ground that the Petition is untimely ("R & R"). The R & R, expressly incorporated herein, thoroughly and thoughtfully analyzed Petitioner's claims and recommended that the petition be dismissed as time-barred. Petitioner has filed objections to the R & R ("Objections"). Respondent did not file a reply to the Objections. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument.

In his Objections, Petitioner sets forth essentially the same arguments raised in the Petition and addressed in the R & R. Instead of responding to these arguments a second time, the court adopts the R & R in its entirety. The Petition is dismissed as time-barred.

**IT IS SO ORDERED.**

DATED: November 1, 2007

  
Hon. Jeffrey T. Miller  
United States District Judge

cc: All parties